IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.556 OF 2002

The Commissioner of
Income-tax-I, Pune .. Appellant
V/s.
Cogent Engineers Pvt.Ltd. .. Respondent.

Mr.R.V. Desai, Senior counsel with Ms.S.V. Bharucha i/b. K.B. Rao for the appellant.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 26TH AUGUST, 2004.

P.C. :

Heard.

2. Mr.R.V. Desai, the learned senior counsel is not right in contending that the assessee does not follow mercantile accounting practise since the record before us speaks otherwise.

3. The Tribunal considered the matter thus:

> "8. We have heard both the sides, gone through the orders of the authorities below and the documentary evidence filed before the lower authorities and copies placed before

us, to which our attention was drawn and the case law cited. It is admitted position of fact that there was delay in delivery of boiler to be supplied by the assessee to DSM Sugar Barabanki and there is penalty clause in the agreement entered into between the assessee and said purchaser for which the purchaser staked its claim. It also appears from the copies of the letters written to the said purchaser by the assessee company starting from 2.12.1996 to 18.2.1997 and letter of DSM Sugar, Barabanki dated 22.12.1996 that the purchaser would insist for the said penalty on the assessee and quantum of penalty was ultimately fixed at Rs.43 lakhs between the parties and the same was conveyed by the assessee to the said purchaser vide letter dated 18.2.1997 whereby liability to this extent was admitted. However, the acceptance thereof was conveyed vide letter dated 5.4.1997 on receipt of letter of the assessee dated 18.2.1997. Therefore, it cannot be said that the amount of liability was either not ascertained or definite in the year under consideration. While dealing with similar type of issue and applying the ratio of the decision as cited by the learned counsel for the assessee, in the case of Bharat Earthmovers (supra), Hon'ble Supreme Court has held as under.

> 'If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in presenti though it will be

> discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.'
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> In view of the facts and circumstances of the case and applying the ratio of precedents referred, we are of the view of that the liability on account of penalty to the extent of Rs.43 lakhs as admitted by the assessee vide letter dated 18.2.1997, has arisen during the year under consideration, and its having been discharged on a future date, will not affect the allowability of the same. Therefore, in view of the facts and circumstances and in light of the above discussions, we accept the appeal of the assessee and delete the addition of Rs.43 lakhs made by the A.O. and confirmed by the CIT(A)."

4. The consideration of the matter by the Tribunal does not suffer from any infirmity. No substantial question of law arises in this appeal.

5. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)